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September 4, 2001

VIA HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State and Federal Regulations*

Docket No: 01-00362

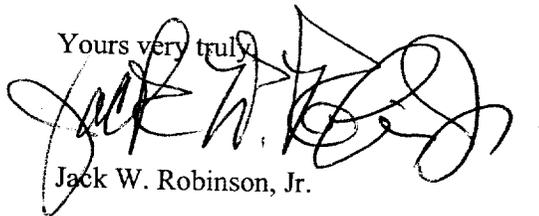
Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of AT&T Communications of the South Central States, Inc.'s:

1. Motion for Reconsideration and Clarification of the Authority's Plan To Determine the Extent of Third-Party Testing Necessary To Assess the Compliance of BellSouth Telecommunications, Inc.'s Operational Support Systems with State and Federal Law;
2. Motion for Discovery; and
3. Motion for Michael A. Hopkins to Appear *Pro Hac Vice*.

Copies are being served on all known counsel of record.

Yours very truly,



Jack W. Robinson, Jr.

JWRjr/plw
Enclosures

cc: Parties of record
Sylvia Anderson, Esq.
James P. Lamoureux, Esq.
Garry Sharp

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: *Docket to Determine the Compliance of BellSouth Telecommunications,
Inc.'s Operations Support Systems with State and Federal Regulations*

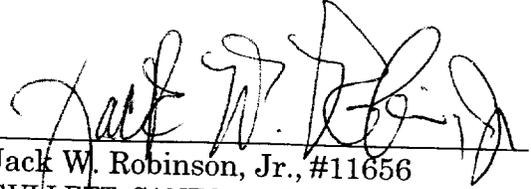
Docket No: 01-00362

**MOTION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL
STATES, INC. AND TCG MIDSOUTH, INC.
FOR MICHAEL A. HOPKINS TO APPEAR *PRO HAC VICE***

Pursuant to Rule 19 of the Rules of the Tennessee Supreme Court and TRA Rule 1220-1-2-.04(7), AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (together referred to as "AT&T") move that Michael A. Hopkins be allowed to represent them and appear on their behalf before the Tennessee Regulatory Authority in the above-titled proceeding. The Affidavit of Michael A. Hopkins, as required by Rule 19, will be filed.

Jack W. Robinson, Jr. of the firm of Gullett, Sanford, Robinson & Martin, PLLC, who resides and maintains a law office in Nashville, Tennessee, is likewise representing AT&T in this proceeding and consents to the association of Michael A. Hopkins in representing AT&T herein.

Respectfully submitted,



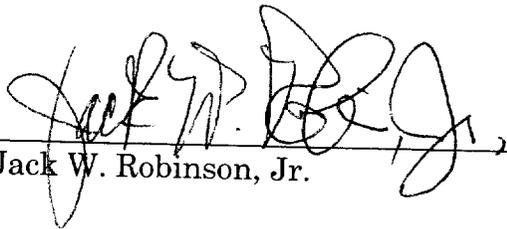
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Inc.

CERTIFICATE OF SERVICE

I, Jack W. Robinson, Jr., hereby certify that I have served a copy of the foregoing Motion on the following known counsel of record, by facsimile and by depositing a copy of the same in the United States Mail, postage prepaid, this 4th day of September, 2001.



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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No: 01-00362

MOTION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., TCG MIDSOUTH, INC. AND SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION FOR DISCOVERY

Pursuant to Rule 1220-1-2-.11(1) and T.C.A. §4-5-311(a), AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (together referred to as "AT&T") hereby petition the Tennessee Regulatory Authority ("TRA") for discovery in this proceeding. Because of time concerns previously expressed by the TRA, AT&T proposes that this discovery regarding BellSouth Telecommunications, Inc. ("BellSouth") take place on an expedited basis, pursuant to the schedule set out in Section IV of the *Motion of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Reconsideration and Clarification of the Authority's Plan to Determine the Extent of Third-Party Testing Necessary to Assess the Compliance of BellSouth Telecommunications, Inc.'s Operational Support Systems with State and Federal Law* filed simultaneously herewith in this proceeding. Except as specifically provided herein, all discovery shall be effectuated in accordance with the Tennessee

Rules of Civil Procedure. See Rule 1220-1-2-.11(1). Allowing such discovery is required as set out in T.C.A. §4-5-311(a).

In effectuating the discovery, AT&T will be cooperative so that it can be completed promptly and efficiently. The discovery will be taken by interrogatory, document request, admission request, deposition, and other permissible means as allowed by the Tennessee Rules of Civil Procedure.

Pursuant to the federal Telecommunications Act of 1996 as well as the Tennessee Telecommunications Act of 1995, BellSouth is obligated to provide non-discriminatory access to its Operations Support Systems ("OSS") to AT&T and other Competitive Local Exchange Carriers ("CLECs"). In making its decision as to whether BellSouth is providing OSS that comply with state and federal law, the TRA needs to be fully informed, since its decision may impact BellSouth, the CLECs, and ultimately the consumers in the State of Tennessee, which are, of course, the ultimate beneficiaries of the development of competition.

Thus, it is important that the TRA and the CLECs, including AT&T, be able to examine: all data, tests, analyses and reports (collectively "information") relating to BellSouth's OSS; whether information regarding BellSouth's OSS from other states (which it is anticipated that BellSouth will try to introduce) may be relied upon to determine whether its provision in Tennessee is non-discriminatory; and the strengths and weaknesses of such information and of BellSouth's OSS. Accordingly, discovery of BellSouth -- and potentially third parties as well -- should include, without limitation, the following issues:

1. All matters relating to BellSouth's OSS, including, without limitation, whether they are regional or Tennessee-specific and whether any aspect of them is discriminatory with respect to the CLECs.

2. The processes, systems, methods and procedures that support BellSouth's wholesale operations in Tennessee or use Tennessee labor.

3. How BellSouth's OSS serving other states, such as Georgia and Florida (which it is anticipated that BellSouth will try to discuss), are similar to, or different from, BellSouth's OSS serving Tennessee.

4. Whether BellSouth's software infrastructure, including electronic interfaces and databases, is regional and identical for all states, or whether there are variations applicable only to Tennessee or other states.

5. The systems and processes used by BellSouth in its Tennessee operations to provide services and network elements to CLECs, and whether such systems and processes (as designed or operated) impede competition in any manner.

6. The similarities and differences between BellSouth's Birmingham local carrier services center and its Atlanta local carrier services center.

7. All information, investigations, workpapers and background materials relating BellSouth's OSS serving Tennessee and other states, whether prepared by BellSouth, KPMG Consulting, Inc. ("KCI"), PriceWaterhouseCoopers LLP ("PWC"), Hewlett-Packard, or any other person or company.

8. All payments to KCI, PWC, HP and/or others for the items described in 7 above, and the financial and contractual relationships between BellSouth and them.

AT&T anticipates that BellSouth will object to any efforts to effectuate discovery of third parties in this proceeding. Third party discovery, however, is customary and well-accepted in Tennessee and is provided for in the Tennessee Rules of Civil Procedure. See, e.g., Rules 26, 30, 31 & 45, Tenn. R. Civ. P. Moreover, third party discovery in this proceeding is particularly appropriate given the activities of certain parties with respect to evaluations of BellSouth's OSS. AT&T anticipates that BellSouth will attempt to submit reports prepared by KCI and PWC, and paid for by BellSouth, as exhibits in support of the testimony of its

in-house employee-witnesses. Indeed, although they have now been struck by TRA Order dated August 3, 2001, such reports were submitted as exhibits to the June 21 and July 31 pre-filed testimony of Ronald M. Pate, an employee of BellSouth. It is anticipated that BellSouth will rely heavily on these reports in this proceeding. Moreover, there should be no dispute that the activities of KCI and PWC are relevant to the core issue of this proceeding. The fact that KCI and PWC are not parties to this proceeding is immaterial.

The KCI report relates to its OSS testing analysis for BellSouth in Georgia, and the PWC report relates to the alleged regionality of BellSouth's OSS systems throughout its nine (9) state region. In any court of law, to introduce these reports would require the live testimony (and the opportunity for cross-examination) of the person(s) who prepared and worked on the reports. Because of the importance of this proceeding, it is vital that there be full disclosure of all relevant information; an opportunity to examine the strengths, weaknesses and reliability of such reports; and an opportunity to fully determine (without restriction) their applicability to this proceeding and BellSouth's OSS serving Tennessee. If BellSouth wants to introduce the reports, then it should have to produce the persons who prepared and worked on them, and who did the testing and analyses discussed therein, for deposition, so that the CLECs will be able to analyze whether BellSouth's OSS for Tennessee is non-discriminatory and complies with applicable law (see, e.g., 47 U.S.C. §§251(c) & 252(d) and T.C.A. §65-4-124(d)), so that the CLECs will have a fair opportunity to learn the pertinent facts, and so that the TRA will be able to make a fully informed decision. If BellSouth does not provide the requested reports, documents,

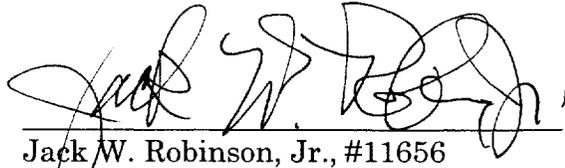
information and persons for deposition, it should not be able to enter the reports into evidence or discuss them in this proceeding.

The TRA and the CLECs need the ability to probe into and look behind the reports to see to what extent they can be relied upon in evaluating Tennessee operations. The only way that this can be done is if the CLECs have the ability to look behind the face of the reports prepared and worked on by persons such as employees of KCI and PWC. Without such discovery, the TRA will not be able to meet its obligations pursuant to T.C.A. §§ 65-4-123 & 65-4-124. The integrity of the TRA's recommendation to the FCC on BellSouth's Section 271 application will be impaired without the full and complete discovery contemplated herein.

The TRA, the CLECs, and the people of Tennessee are best served by there being full disclosure of all pertinent information by BellSouth in this important proceeding and the production of persons who prepared the information for it. Only when the TRA is fully informed can it make a reasoned decision. Accordingly, AT&T requests that there be discovery in this proceeding, which shall include those issues and matters set forth hereinabove.

The Southeastern Competitive Carriers Association joins in this Motion with AT&T, as indicated by the signature of its counsel below.

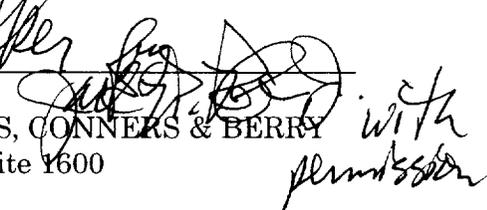
Respectfully submitted,



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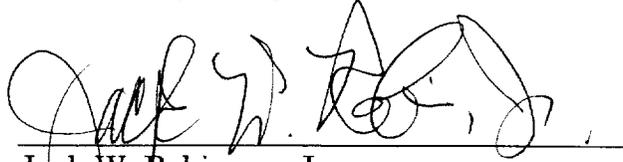



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CERTIFICATE OF SERVICE

I, Jack W. Robinson, Jr., hereby certify that I have served a copy of the foregoing Motion on the following known counsel of record, by depositing a copy of the same in the United States Mail, postage prepaid, this 4th day of September, 2001.



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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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EXECUTIVE SECRETARY

In re:
Docket to Determine the Compliance)
of BellSouth Telecommunications, Inc.'s)
Operations Support Systems with State)
and Federal Regulations)
)

Docket No.: 01-00362

MOTION¹ OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND TCG MIDSOUTH, INC. FOR RECONSIDERATION AND CLARIFICATION OF THE METHOD THE AUTHORITY HAS DECIDED UPON TO DETERMINE WHETHER BELL SOUTH'S OPERATIONAL SUPPORT SYSTEMS COMPLY WITH STATE AND FEDERAL LAW

AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively, "AT&T") hereby move the Tennessee Regulatory Authority (the "Authority") to reconsider and clarify the manner in which it will proceed with its review and evaluation of whether the operational support systems ("OSS") of BellSouth Telecommunications, Inc. ("BellSouth") comply with state and federal regulations. AT&T suggests that the available information regarding the lack of regionality of BellSouth's systems, serious deficiencies in the Georgia test, and concerns regarding BellSouth's conduct during both the Georgia and Florida tests support a summary conclusion that OSS testing is necessary in Tennessee, and that the Authority's most efficient course of action is to implement an independent third-party OSS test without delay. If the Authority would prefer to conduct a hearing on the applicability and reliability of ongoing testing, AT&T has proposed a schedule to achieve the required discovery and hearing in an expeditious manner.

¹ As indicated by the signature of its counsel below, the Southeastern Competitive Carriers Association joins in this Motion with AT&T.

I. THE AUTHORITY SHOULD PROCEED WITH ITS PLAN FOR ENSURING THAT BELL SOUTH HAS ADEQUATE OSS TO SUPPORT COMPETITION IN TENNESSEE

The Authority created the instant docket “to determine whether existing data or test results derived from OSS testing in other states is reliable and applicable to Tennessee and, in those instances where reliance on such testing is inappropriate, to conduct necessary testing.” (Order Approving First Report and Recommendation of the Pre-Hearing Officer, dated July 27, 2001 (“July 27 Order”) at 2-3.) The Authority initially determined that an independent third-party review would be helpful in its evaluation of the reliability and applicability questions. In making this determination, the Authority considered the pre-hearing officer’s concerns regarding inconsistencies in BellSouth’s data request response filed on January 29, 2001, as well as information indicating that the testing in Georgia and Florida is not consistent. Specifically, the pre-hearing officer concluded that some of BellSouth’s legacy systems “serve only a subset of the region . . . some serve only Tennessee [and] [s]ome OSS processes that serve Tennessee customers are different from those that serve Georgia and Florida customers.” (First Report and Recommendation of Pre-Hearing Officer at 4.) The pre-hearing officer expressed concern about “processes that are specific to Tennessee or utilize Tennessee labor, such as the process for ‘hot cuts.’” *Id.* at 5. In light of the need for an even-handed investigation and presentation of the facts required for the Authority to conduct a thorough, well-informed evaluation, AT&T and other competitive local exchange carriers (“CLECs”) concurred in the Authority’s decision to retain a third-party consultant. (*See* AT&T’s letter of May 11, 2001; Comments of the Southeastern Competitive Carriers Association, filed May 11, 2001.)

Subsequent diligent efforts to implement this decision, however, encountered unforeseen obstacles. Specifically, what appeared to be a benefit that would improve the efficiency of the independent evaluation – the familiarity of KPMG Consulting, Inc. (“KCI”) with the ongoing tests in Georgia and Florida – has proven to be a handicap, because KCI is unwilling to provide critical opinions related to the scope, conduct, and distinguishing characteristics of its work in Georgia and Florida.

KCI's position, however, does not diminish the need for the Authority to determine whether ongoing third-party tests are reliable and applicable to Tennessee. BellSouth's apparent rush to make a Section 271 application to the FCC should not obscure the real purpose of the contemplated third-party test.¹ This docket is one of "a series of steps to assure BellSouth's compliance with the laws requiring it to provide nondiscriminatory access to its OSS." (July 27 Order at 2.) Under the federal Telecommunications Act of 1996 and the 1995 Tennessee Telecommunications Act, BellSouth is required to open its markets to competition. Third-party testing is necessary to assess BellSouth's compliance with federal and Tennessee law. Accordingly, the Authority's reasons for establishing this docket and for initially seeking assistance from an independent consultant remain valid, and the Authority should reconsider its decision not to retain an independent consultant. If KCI is unwilling to perform the work the Authority requested, the Authority should retain another company that may not be as familiar with KCI's testing of BellSouth's OSS, but nonetheless has the experience to analyze the work and advise this Authority on the need for additional third-party testing of BellSouth's OSS in Tennessee.

AT&T recognizes, however, that the Authority may choose to proceed without an independent consultant to advise the Authority on the threshold issue of whether a separate third-party test is necessary in Tennessee and, if so, the scope of testing necessary. Should the Authority remain resolved to conduct its own analysis of how extensive a third-party test should be conducted in Tennessee, AT&T respectfully requests that the Authority clarify the course it intends to pursue. The first option is for the Authority to proceed directly to third-party testing

¹ BellSouth's aggressive push need not be accepted by this Authority. The TRA has the right and responsibility to review BellSouth's performance in Tennessee and to provide comments to the FCC. A BellSouth application to the FCC while this Authority is conducting a thoughtful review of BellSouth's performance would be a questionable choice. Moreover, as this Authority has recognized, this OSS review is important for reasons other than BellSouth's Section 271 application.

of BellSouth's OSS in Tennessee. This option has the benefit of expediency and would avoid a superfluous hearing. Indeed, the pre-hearing officer's First Report and Recommendation recognized that Tennessee-specific issues may undercut the applicability of the Georgia and Florida third-party tests to Tennessee. (*See supra* at 2.) Based on its participation in proceedings in other jurisdictions, AT&T is confident that either an independent audit or an adversarial hearing proceeding would only reinforce the conclusion that third-party testing in Tennessee is necessary. One reason for AT&T's confidence - the lack of uniformity of BellSouth's systems across the region - is discussed more fully in Section II, *infra*. In light of the fact that the only states to have ordered testing of BellSouth's systems were formerly Southern Bell states, the third-party test will provide an unique opportunity to assess BellSouth's performance in a formerly South Central Bell state.

In addition, recently obtained information underscores that the results in Georgia and Florida do not reflect what is happening or will happen in Tennessee. Documents AT&T obtained through discovery in another state cast doubt on the applicability of the results of both the Georgia and Florida tests to BellSouth's performance in Tennessee. Recently-produced Pricewaterhouse Coopers ("PWC") documents show that BellSouth improperly influenced the results of both tests by giving preferential treatment to orders in those states in an effort to improve its apparent performance. The results of these tests are therefore unreliable evidence of BellSouth's Tennessee OSS and cannot provide the basis for a well-reasoned analysis regarding performance in Tennessee.

BellSouth glosses over the fact that neither the Georgia nor Florida test is complete. As explained in Section III, *infra*, the Georgia OSS Test upon which BellSouth urges the Authority to rely is not complete. Moreover, it is flawed in design and implementation. More specifically, the Georgia test cannot provide the Authority with any confidence that BellSouth's OSS for Tennessee provide nondiscriminatory treatment for CLECs because: (1) it neglects to test numerous vital elements of BellSouth's OSS; (2) many of the systems it does test are scheduled for sunset and will be obsolete within one year; and (3) the methods by which KCI determined

its results are questionable. In addition, the Florida test, which is finding a number of deficiencies that were not uncovered in the Georgia test, is incomplete. The serious deficiencies in the Georgia test combined with the incomplete status of both OSS tests, as well as the absence of any other third-party testing in the former South Central Bell region, demonstrate the need for OSS testing in Tennessee. Accordingly, the most expeditious route, and the next logical step, is to proceed directly to an OSS test in Tennessee.

In the alternative, if the Authority desires additional information regarding the applicability or reliability issues, its second option is to conduct proceedings, including full discovery and a hearing, in which BellSouth and the CLECs may present their respective positions on the questions of regionality, the reliability of the Georgia and Florida test results, and the need for testing in Tennessee. The authority of the TRA to order full discovery in this docket is discussed in the Motion of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Discovery, filed today. At the conclusion of those proceedings, the scope of the test could be set. In Section IV, *infra*, AT&T proposes a schedule for the Authority's consideration if it deems such proceedings necessary.

II. THE AUTHORITY CANNOT CURRENTLY RELY ON THE RESULTS OF THE GEORGIA AND FLORIDA TESTS TO PREDICT BELLSOUTH'S TENNESSEE PERFORMANCE

BellSouth's representation that its OSS are the same region-wide defies logic. As a practical matter, CLECs entering the market must obtain interconnection facilities, collocation facilities and information about local network design from BellSouth. Although a regional account team might deal with the CLEC, the specifics of what is available and how it will be provided are unique to each state. Moreover, as they attempt to compete, CLECs must use each of BellSouth's OSS functions, which have state-specific differences.

For example, pre-ordering performance varies from state to state because it depends upon data contained in BellSouth's legacy systems. The legacy systems are the operational support systems that existed before the Telecommunications Act required opening the local markets to competitors, and both access to data and quality of data may differ among them. Because the

data for each of the nine states is state-specific, the maintenance and accuracy of the databases can vary from state to state. In addition, the physical hardware of the legacy systems and its connectivity to the network may cause variation in access time and accuracy of data.

In addition, although the pre-ordering process for simple services is centralized, the pre-ordering process for complex services, which require a service inquiry prior to ordering, are dependent upon manual processes, work groups and information that are organized by state. As a result, the timeliness and accuracy of responses in different states may be vastly different.

Ordering, like pre-ordering, relies upon BellSouth's legacy systems and therefore is not consistent across states. Moreover, many orders are handled manually by a BellSouth local carrier service center ("LCSC"). The input systems used by BellSouth personnel in the LCSCs differ between the former Southern Bell and South Central Bell states. Consequently, the Southern Bell state LCSC input systems tested in Georgia and Florida are not identical to the input systems used for orders from Tennessee.

BellSouth's provisioning, too, varies across the region. BellSouth uses work groups that are organized on a geographic basis to perform the processes necessary to install requested services. Some work groups are organized into separate units state by state or into multiple units within a single state called "Turfs." Some of the work groups organized by state, or by Turf, include the Address and Facility Inventory Group, the Circuit Provisioning Group, the Recent Change and Memory Administration Center, the Work Management Center and Installation Field Forces. Because the organization of these groups is divided state by state or Turf by Turf, performance data from one state is not an accurate measure of performance in another state.

The lack of uniformity among BellSouth's systems means that results of the Georgia and Florida tests may not provide the Authority with the information it needs to conclude that BellSouth provides OSS in Tennessee that comply with federal and state law. Accordingly, the Authority should not allow BellSouth to simply extrapolate its Georgia and Florida test results to Tennessee.

III. THE GEORGIA TEST IS NOT A RELIABLE INDICATOR OF THE PERFORMANCE OF BELL SOUTH'S OSS IN TENNESSEE AND THE FLORIDA TEST RESULTS MAY ALSO BE TAINTED

Even if the Georgia test were applicable to BellSouth's Tennessee performance, the Authority should reject the test results as unreliable. Likewise, certain Florida test results may be unreliable indicators of BellSouth's performance in Tennessee. Specifically, recent discovery has exposed BellSouth's policy of giving preferential treatment at its Local Carrier Service Centers to CLEC orders for Georgia and Florida over orders in other states. As a consequence, the test results from those orders are invalid as indicators of performance in other states. More seriously, this blatant effort to game the tests engenders suspicion regarding BellSouth's conduct throughout and casts doubt on the reliability of both tests. In addition, both the Georgia and Florida tests tested systems that BellSouth plans to phase out in the next year. Finally, the Georgia third-party test is rife with statistical and methodological problems in the development, design, performance, and results of the test.

A. BellSouth's Conduct Has Raised Suspicion Regarding the Reliability of the Results of Both the Georgia and Florida Tests

AT&T discovery efforts recently uncovered documents that cast doubt on the usefulness of some of the results of both the Georgia and Florida OSS tests. Documents produced by Pricewaterhouse Coopers indicate that until April 23, 2001, at least one of BellSouth's service centers, which was subject to testing in both the Georgia and Florida tests, maintained a policy of giving local service requests ("LSRs") received from Georgia and Florida priority over LSRs from the other BellSouth states, including Tennessee. Thus, for much of the period of time of the Georgia test, BellSouth intentionally gave priority to orders received from KCI. BellSouth has admitted that the third-party test results in Georgia and Florida reflected BellSouth's preferential treatment. (*See* Testimony of Ronald M. Pate, South Carolina Public Service Commission, Docket No. 2001-209-C (Aug. 23, 2001) ("Pate Test.") at 2383:24-2384:1; 2387:12-22, excerpts attached as Exhibit A.)

BellSouth witness Ronald M. Pate acknowledged in a recent South Carolina proceeding that giving preferential treatment to orders from Georgia or Florida during the testing would be tantamount to cheating. (Pate Test. at 2372:20-2373:11.) Nonetheless, BellSouth provided this preferential treatment and did not disclose it to the Georgia and Florida Commissions or to CLECs attempting to compete in BellSouth's market. When asked about the issue generally, Mr. Pate initially denied providing preferential treatment to orders involved in the testing. (Pate Test. at 2373:13-16.) It was not until Mr. Pate was confronted with documentary evidence that he admitted BellSouth had provided preferential treatment to partially mechanized and manual orders from Georgia and Florida as compared to similar orders from other states. (Pate Test. at 2380-81; 2383:18-23.)

This matter casts a cloud of suspicion over BellSouth and its conduct in both third-party tests. AT&T only learned about BellSouth's preferential treatment through documents buried in a discovery request that was tangentially-related to third-party testing. BellSouth's conduct before and after being confronted with the evidence raises questions about BellSouth's credibility and integrity. In light of the fact that the OSS tests were not blind to BellSouth and that BellSouth instituted a process which manipulated the results and subsequently attempted to conceal its actions, the accuracy of some of the results and the overall reliability of the Georgia and Florida tests are now called into question. Accordingly, the Authority should decline BellSouth's invitation to rely on either of these tests in Tennessee.

B. Many of the Results of the Georgia and Florida Tests May Become Obsolete

Through additional discovery in North Carolina, AT&T recently learned that BellSouth has secret plans to replace many of its key OSS with new systems over the next eighteen months. BellSouth considers its replacement plan to be proprietary and subject to non-disclosure provisions of a North Carolina protective agreement. As a result, AT&T is limited in its ability to discuss the specifics of the plans. According to information which is public about BellSouth's plan, many of the systems tested since the Georgia test began in 1999 are scheduled to be phased out by the end of 2001 and will be obsolete by the end of 2002. Testing of these systems,

therefore, is not an accurate predictor of the service customers and CLECs in Tennessee can expect from BellSouth in the near future.

C. The Georgia and Florida Tests Are Not Yet Complete

In addition to the problems associated with BellSouth's manipulation of the test results and the planned obsolescence of the systems tested, both the Georgia and Florida tests have substantial work yet to be done. For example, as of July 31, 2001, the data integrity portion of the Florida test was only 13% complete. In addition, there is some indication that further billing testing in Florida will be delayed until BellSouth's new Tapestry billing database is implemented and tested. The Florida test is not expected to conclude before December 2001.

In Georgia, two substantial performance metrics projects are among the incomplete portions of the test. First, KCI is conducting an evaluation of BellSouth's metrics, because KCI has not been able to reproduce from its early-stage data the performance results BellSouth has been reporting. This evaluation is scheduled to be completed by September 28, 2001, if no defect results are found. The Georgia Commission has stated its intention to hold a hearing after the metrics evaluation is complete, but a schedule has not been determined. The second substantial project is KCI's audit of BellSouth's performance data, which will be completed December 21, 2001 in the absence of any defect results.

The incomplete portions of the third-party tests are important to an assessment of the usefulness of each test. The unfinished status of the Georgia and Florida tests provides another reason that the Authority should not rely on them but should, instead, order its own test.

D. The Georgia OSS Test is Flawed

Even setting aside BellSouth's impact on the Georgia test and its incomplete status, the Authority should not rely upon the Georgia third-party test because the Georgia test does not provide persuasive evidence that BellSouth's OSS are adequate. "[T]he persuasiveness of a third-party test is dependent on the conditions and scope of the review." Memorandum and Opinion, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In*

Michigan, 12 FCC Rcd. 20,543 ¶ 216 (F.C.C. August 19, 1997) (No. CC97-137, FCC 97-298). “[T]hird-party reviews should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to conduct business utilizing the incumbent’s OSS access.” *Id.* Third-party tests that are not comprehensive, not independent, and not blind are not persuasive evidence in assessing the real world impact of an incumbent’s OSS on competing carriers. *See Memorandum Opinion and Order, In the Matter of Application By Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 ¶ 100 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404).

The Georgia test was limited in scope. It did not test a number of important issues, including the ability of a CLEC to build interfaces with the publicly available documentation, BellSouth’s management of its relationships with CLECs, or any manual processes associated with BellSouth’s OSS. In addition, AT&T has a number of concerns with the test as it was performed in Georgia: (1) KCI’s subjective conclusions of “satisfied” were undercut by its comments; (2) KCI’s objective tests masked aspects of BellSouth’s deficient performance; (3) KCI’s statistical analysis was incomplete; and (4) KCI improperly applied unsubstantiated “professional judgment” to transform unsatisfied results to satisfied. Moreover, the Georgia test was not sufficiently comprehensive, independent or blind to be persuasive. Finally, the Georgia test is not complete. Accordingly, the Authority should not rely on the Georgia test.

1. The Georgia Test Was Limited in Scope

The usefulness of the Georgia test is severely curtailed by its limited scope. The test design excludes from testing numerous vital areas of BellSouth’s performance. The Georgia test was therefore unable to capture and measure BellSouth’s performance in these areas.

For example, the Georgia test’s evaluation of BellSouth’s methods and procedures for designing and building OSS interfaces and its evaluation of BellSouth’s current interfaces are inadequate. Specifically, although OSS '99 is BellSouth's "state of the art" upgrade to its pre-

ordering and ordering interface, the Georgia Test began several months before OSS '99 was available, so KCI began testing the old versions of EDI and TAG that predate OSS '99. This practice continued, however, even after OSS '99 was in place. Moreover, the Georgia OSS test did not evaluate any versions of LENS, (currently the most widely used interface, accounting for 69% of all electronic Local Service Requests submitted in the region) or Robo-TAG, which combines TAG with a front-end graphical user interface. Finally, KCI did not test whether a CLEC using information BellSouth makes publicly available could build the interfaces which KCI used in Georgia to place test orders.

The Georgia test also excludes from evaluation manual handling of orders. This limitation effectively ignores the approximately 12% of all orders that are submitted manually and 22% of accurate and complete CLEC electronic orders that fall out for manual processing. Furthermore, because it tests only automated systems, the Georgia test does not consider potential bottlenecks caused by inadequate procedures or staffing at work centers. This is a critical piece of any third party test, given the large percentage of orders that BellSouth processes manually.

BellSouth claims that it offers over eighty UNEs to CLECs.² The Georgia test, however, evaluates only six UNEs for ordering, provisioning, and billing activities.³ Key UNEs omitted from these tests include digital UNEs, Enhanced Extended Links (EELs), customized routing of Operator Services and Directory Assistance, and line-sharing. UNE billing testing in Georgia, moreover, was limited to those orders that had been part of the ordering and provisioning tests and did not include multiple bill cycles.

The Georgia test does not consider several critical performance measures, including local number portability (“LNP”) measures; processes for developing SQM definitions and standards;

² See Georgia OSS Master Test Plan Version 4.0, page A-4.

³ An additional UNE, xDSL, was added in the Supplemental Test Plan.

data integrity assessment of CLEC and retail transactions end-to-end through the data filtering process; analysis of the adequacy and appropriateness of BellSouth-provided measures; test metrics based upon collaborative process with a series of comments and workshops; and comparison of test metrics results to BellSouth retail metrics and, in some cases, to CLEC results. These measures of performance are important to a comprehensive assessment of BellSouth's performance.

Among the most serious deficiencies in the Georgia test is its failure to conduct testing that would predict whether BellSouth's systems could handle anticipated real-world volumes. The volume testing conducted during the Georgia Test is not useful for the following reasons: (1) testing took place on a special testing database rather than in a production environment; (2) the tests were not conducted across all interfaces and product lines – for instance, the test did not assess volume processing of partially mechanized and manual orders and did not include the GUI interfaces (LENs and Robo-TAG) or the repair interface (TAFI); and (3) no stress testing was conducted and the modest volumes tested do not provide a true assessment of the ability of BellSouth's OSS to process orders at future projected volumes.

Finally, the Georgia test did not measure transactions from end to end. Delays and other problems which were determined not to be statistically significant or to have no adverse effects on competition when tested in isolation may have a cumulative or amplified effect that would be highly significant in an end-to-end analysis. The Georgia test fails to capture such a deficiency.

The scope of the Georgia test necessarily restricts its applicability. The exclusion of certain areas from testing handicaps this Authority and other commissions in their efforts to rely on the Georgia test as part of a comprehensive analysis of BellSouth's OSS performance. The Georgia test simply was not designed to provide the entire picture.

2. KCI's Subjective Conclusions of "Satisfied" Were Undercut by Its Comments

Much of the Georgia third-party test involved subjective analysis rather than measurement against standards. KCI's subjective analysis is a matter of concern, because

although KCI concluded that BellSouth satisfied all of the tests based on its subjective analysis, KCI's comments suggest problems. For example, KCI found significant problems with BellSouth's delivery of usage information necessary for CLECs to bill their customers, but found BellSouth "satisfied" the related billing tests. In addition, KCI has admitted that, in conducting its subjective analyses, it relied on BellSouth's representations without validating them and did not consider the CLEC's point of view. Moreover, KCI found BellSouth "satisfied" the change management test even though the system KCI evaluated was still evolving. While a certain amount of subjective judgment was necessary, KCI's subjective analyses appear to be unduly weighted towards BellSouth.

3. KCI's Objective Tests Masked Aspects of BellSouth's Deficient Performance

KCI's conclusions of "satisfied" on the objective tests that relate to timeliness and accuracy of pre-ordering and ordering and provisioning are questionable because KCI aggregated test results in ways that hid performance deficiencies and masked the true performance of BellSouth's systems. The Georgia Commission ordered disaggregated testing. KCI has admitted that it could have tested to those levels of disaggregation, but it did not. Instead, KCI aggregated test results for tests of distinct products and services. As a result, BellSouth "satisfied" certain ordering tests even though its performance for certain important product and service types, *e.g.*, local number portability, which allows customers switching service to keep their own telephone numbers, was either substandard or not tested at all.

KCI also collected and reported data on pre-ordering tests in a way that masked the performance of BellSouth's back-end systems. In evaluating BellSouth's back-end systems, KCI did not confine its reporting and analysis to the time it took the systems to process queries. Instead, KCI included in the analysis queries that were rejected at the gateway, before they entered BellSouth's back-end systems. The time for processing queries that are rejected at the gateway is generally shorter than the time for processing queries entering BellSouth's back-end systems. As a result, including response times for queries that were rejected at the gateway

reduces the average time for processing queries and obscures the actual performance of BellSouth's back-end pre-ordering systems. This deficiency impacts all tests relating to timeliness of pre-order inquiries.

4. KCI's Statistical Analysis Was Incomplete

In a number of instances, KCI determined that a test was satisfied even though BellSouth did not hit the benchmark. These conclusions are unreliable for the following reasons.

- KCI should not have applied a statistical analysis known as "P-value" to tests involving Commission-established benchmarks. This process rewarded BellSouth with a "satisfied" rating even though BellSouth failed to meet the benchmark or other Commission-established standard on seven tests.
- In cases where it may have been appropriate to apply some sort of statistical analysis to account for random variation in results, KCI applied a P-value analysis to account for random "bad" results (to reach a *satisfied* result) but did not use a statistical analysis to rule out random "good" results. This impacts nine (9) of the satisfied results.
- For similar reasons, KCI's "satisfied" results on twelve (12) other tests are questionable because of small sample sizes employed.

In sum, the conclusions drawn by KCI are based on incomplete statistical analysis. More complete statistical analysis shows that many of the conclusions that particular standards were satisfied are not justified by the data in the test. At least twenty-eight (28) of the ninety-six (96) objective pre-ordering and ordering and provisioning tests are impacted by this inappropriate statistical analysis.

5. KCI Improperly Applied Unsubstantiated "Professional Judgment"

When statistical analysis did not enable KCI to say that a test was satisfied, in many instances, KCI concluded that the test was satisfied based on its professional judgment. KCI used its professional judgment to override Commission-established standards on 24 of the 96 pre-ordering and ordering and provisioning tests for which objective criteria were applied. KCI's practice of using its "professional judgment" to change a finding of "not satisfied" to "satisfied" after seeing the results is questionable.

E. The Georgia Test Was Not Independent

KCI was not truly independent from BellSouth in the Georgia test. Indeed, Georgia is the only state in which KCI conducted a third-party test for which KCI was retained by the ILEC instead of the Commission. This relationship troubled the Florida Commission and contributed to its decision to conduct its own test:

While BellSouth has advocated that we rely on the testing being conducted in Georgia, we are hesitant to do so because we have some concerns about the independence of that testing process. Instead, we believe that the process used in New York and in Pennsylvania is more appropriate for use in Florida. Under the New York DPS OSS testing “model,” the state commission independently selects the third party tester and is the client in the engagement. Once the tester is selected, the state commission and the third party tester jointly develop the master test plan. The commission staff also play a strong role in monitoring and controlling the testing, which is vital to ensure independence and objectivity of the test. In contrast, BellSouth selected the third party tester and serves as the client in the Georgia engagement. It also developed or guided the development of the master test plan.

Notice of Proposed Agency Action Order on Process for Third Party Testing, Florida Public Service Commission, In re: Consideration of BellSouth Telecommunications, Inc.’s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-IL at 7 (Aug. 9, 1999). Moreover, the manner in which KCI implemented military style testing in Georgia potentially skewed the results. As a result, the Georgia third-party test does not constitute persuasive evidence of the performance of BellSouth’s OSS.

The deficiencies in the design and implementation of the Georgia test, the flawed and questionable practices used in calculating the results, and the fact that some of the most crucial elements are incomplete lead to the unavoidable conclusion that the Georgia test cannot support a well-reasoned, thorough analysis of BellSouth’s OSS. Moreover, both the Georgia and the Florida tests are incomplete and suffer from the taint of BellSouth’s manipulation of results. Further, neither test addresses the OSS of Tennessee or any former South Central Bell state. For all of these reasons, the Authority can and should summarily conclude that the Georgia and

Florida tests are not reliable indicators of the performance of BellSouth's OSS in Tennessee and proceed with the implementation of a third-party test in Tennessee.

IV. IF THE AUTHORITY DETERMINES A HEARING ON THE NEED FOR AND SCOPE OF A TENNESSEE THIRD-PARTY TEST IS NECESSARY, THE AUTHORITY SHOULD ADOPT AT&T'S PROPOSED SCHEDULE

For all of the reasons discussed above, this Authority should proceed directly to a third-party test of BellSouth's OSS in Tennessee. If the Authority determines that it requires additional information regarding the applicability and reliability of the Georgia and Florida tests, AT&T requests that the Authority set a format that allows for full discovery as provided in the Tennessee Rules of Civil Procedure. As a threshold matter, for the CLECs to present a complete and accurate picture of the role ongoing third-party testing should play in Tennessee, CLECs must have access to complete information about the ongoing testing and about BellSouth's Tennessee OSS, including information in the possession of third parties such as KCI and PWC. For the CLECs to narrow and expose the material facts, CLECs must have full discovery and a full hearing, including the ability to cross-examine witnesses from BellSouth, KCI, and PWC both in deposition and at the hearing. In the interest of conducting an efficient and meaningful hearing on these important issues, AT&T suggests its proposed schedule.

AT&T has sought discovery of KCI's information about the ongoing testing in a number of jurisdictions. KCI, however, has not been forthcoming with this information. Despite efforts to obtain complete discovery in Georgia about the Georgia third-party test, AT&T was able to obtain only limited documents and depositions. In other jurisdictions, KCI has demonstrated a pattern of delay and resistance to CLEC discovery requests regarding both the Georgia and Florida tests.⁴ (See Letter from Timothy G. Barber on behalf of AT&T to Jo Anne Sanford,

⁴ The North Carolina Utilities Commission has made some progress in addressing the issues arising out of KCI's refusal to comply with AT&T's discovery efforts. See Order Concerning AT&T Motion to Compel, NCUC Docket No. P-55, SUB 1022 (August 30, 2001), attached as Exhibit C.

Chair, North Carolina Utilities Commission, relating history of KCI's resistance to discovery in Georgia and North Carolina, attached as Exhibit B.) Compliance with discovery intended to elicit information relevant to the design, implementation and results of the ongoing tests is essential to an effective, informative proceeding. Accordingly, discovery from BellSouth, KCI, PWC, Hewlett Packard, and any other entity that participated in the third-party tests will be necessary.

The opportunity to conduct full discovery is also essential for CLECs to effectively cross-examine and rebut the testimony of BellSouth's witnesses. As the preferential treatment issue demonstrates and the Authority perceived in the debate over performance measurements, the performance of OSS is hotly contested, and testimony must be carefully parsed to discern the reality. (See, e.g., Testimony of Ronald M. Pate, *In Re: Docket to Establish Generic Performance Measurements, Benchmarks, and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, Docket No. 01-00193, Aug. 20, 2001, pp. 144-48, 201-09.) Indeed, Mr. Pate, who appeared in the recent performance measures docket, is BellSouth's principal witness on OSS. Without access to documentary evidence and hard data, CLECs will be hampered in their ability to pin down the material facts and provide the Authority with a clear picture of BellSouth's actual performance.

To facilitate the Authority's development of a hearing schedule, AT&T submits the following proposed schedule:

- 9/21/01 Discovery requests due from all parties;
- 10/19/01 Discovery responses due from all parties;
- 10/31/01 Direct testimony due from all parties;
- 11/5-19/01 Depositions;
- 11/30/01 Rebuttal testimony due from all parties; and
- 12/10-14/01 Hearing on the Applicability and Reliability of the OSS Tests Currently Being Conducted in Georgia and Florida.

AT&T anticipates that this ambitious schedule will meet the needs of the Authority and the parties only if all parties comply with each deadline. Complete and cooperative discovery will enable the CLECs to demonstrate to the Authority the need for third-party testing in Tennessee.

V. CONCLUSION

The Authority must determine whether BellSouth is providing nondiscriminatory access to its OSS as required by the federal Act and T.C.A. §§ 65-4-123 and 124. The third-party tests currently underway in Georgia and Florida offer a potential source of information to assist in analysis of BellSouth's OSS, but they are limited in usefulness and applicability. The Authority has recognized that these tests must be evaluated and that supplemental and Tennessee-specific testing may be warranted. AT&T submits that this evaluation can be concluded most efficiently in a summary manner. The preceding discussion demonstrates that the ongoing third-party tests do not reflect BellSouth's performance in Tennessee. In addition, neither test is complete, and the results of the Georgia test in particular are not sufficiently rigorous or reliable. Accordingly, AT&T requests that the Authority fulfill the purpose of this docket by implementing a third-party test without delay. Alternatively, AT&T requests that the Authority order full discovery under the proposed schedule and allow the parties to present evidence regarding the need for and scope of the proposed Tennessee third-party test.

Respectfully submitted,

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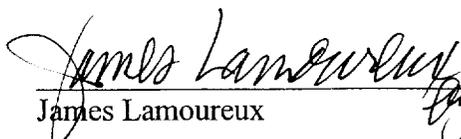
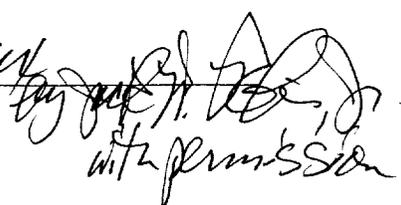
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CERTIFICATE OF SERVICE

I, James Lamoureux, hereby certify that I have served a copy of the foregoing Motion on the following known counsel of record, by facsimile and by depositing a copy of the same in the United States Mail, postage prepaid, this 4th day of September, 2001.


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